



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Electro Methods, Inc.

File: B-233121.2

Date: February 6, 1989

DIGEST

Where contracting agency determined that low bidder had erroneously been rejected as nonresponsible based on inaccurate information, and that award thus should not have been made to second low bidder, agency's subsequent correction of situation by terminating contract for convenience of the government and awarding contract to low bidder is unobjectionable; low bidder had no reason to believe, and was not required to assume, that contracting agency would not rely on correct responsibility information, and thus cannot be faulted for agency's initial erroneous nonresponsibility determination based on inaccurate information.

DECISION

Electro Methods, Inc. protests termination of its contract, and the award of a contract to Turbo Combustor Technology, Inc., under request for proposals (RFP) No. DAAJ09-88-R-0035, issued by the Department of the Army for the purchase of 1,503 deflector assemblies, part of a turbine engine. We deny the protest.

Turbo's was the lowest-priced offer received by the February 15, 1988 closing date; Electro's was next low. On August 12, because of what it viewed as contract delinquencies, the Army determined that Turbo was not a responsible prospective contractor and proceeded with an award to Electro on August 18. Turbo protested to the Army on August 26, arguing that the nonresponsibility determination was improper. The Army reviewed the matter and, on September 7, again concluded that Turbo was nonresponsible.

Turbo then filed a protest with our Office, which we dismissed after the Army stated that it would perform a new survey on Turbo with a full, on-site evaluation, something it had not done in connection with the two previous nonresponsibility determinations. On November 22, based on this

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new survey, the contracting officer concluded that Turbo had in fact been responsible as of the August 18 award date, and that her earlier determinations of nonresponsibility had been erroneous. To correct the error, the Army terminated Electro's contract for the convenience of the government on December 15, and awarded a new contract to Turbo.

Electro contends that it was improper for the Army to terminate its contract based on a post-award survey finding Turbo responsible because Turbo did not make sure that the Army originally relied on correct information to determine its responsibility.

We find nothing unreasonable in the Army's actions here.^{1/} It is clear from the record that the award to Electro as the second low bidder occurred only as the result of a nonresponsibility determination of Turbo, the low bidder, a determination the Army subsequently concluded was erroneous. Electro does not dispute that the Army's nonresponsibility determination was erroneous, and does not contend that Turbo in fact is nonresponsible.

Electro's argument that Turbo was responsible for the original nonresponsibility determination is without legal merit. Under the circumstances here, we think Turbo could reasonably expect that the correct information would be considered by the Army; we are aware of nothing that requires an offeror to assume that incorrect or inaccurate information would be used against it when the agency is in possession of the correct information. Therefore, we fail to see how Turbo can be faulted for the Army's initial determinations, and we find the termination of Electro's contract to be unobjectionable.

The protest is denied.


 James F. Hinchman
General Counsel

^{1/} Although the decision by an agency to terminate a contract for convenience generally is a matter of contract administration not reviewable by our Office, we will consider the reasonableness of such a termination where the agency determines that the initial award was improper and should be terminated to permit a proper award. See Special Waste, Inc., B-230103, June 2, 1988, 88-1 CPD ¶ 520.